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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,811	03/25/2004	Yoshinori Tanaka	FUSA 21.076	7590
26304 7590 05/14/2010 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585				
EXAMINER				
ROSE, KERRI M				
ART UNIT		PAPER NUMBER		
2474				
MAIL DATE		DELIVERY MODE		
05/14/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/808,811

Applicant(s)

TANAKA ET AL.

Examiner

KERRI M. ROSE

Art Unit

2474

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57 and 58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57 and 58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI.08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Interval Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 57 and 58 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Classon et al. (US 2002/0159384) in view of "Data Service Options..." referred to as RLP2.

4. In regards to claim 57, Classon discloses a packet transmitting apparatus in a communication system for transmitting a packet upon changing over a parameter of a transmit signal in accordance with conditions of a propagation path, and, when the packet cannot be received correctly on a receiving side, retransmitting the packet (Paragraph 5 discloses retransmitting packets when necessary and adjusting the size of the retransmitted packets to match the new path conditions.), comprising:

buffer means for storing one or more transmitted packets with identifying information and a modulation parameter appended thereto (Paragraph 29 discloses storing transmitting packet along with identifying information and modulation information in buffers.);

decision means for deciding a modulation parameter based upon conditions of the propagation path (Paragraph 22 discloses changing the modulation parameter from the time of the first transmission to the time of the retransmission.); and

and for retransmitting the packet, when a reception failure is sent back for the packet from the receiving side, upon attaching identifying information and the modulation parameter prevailing at a time of retransmission (Paragraph 19 discloses attaching identifying information including modulation of the original transmission and modulation of the current retransmission.), with the retransmission being performed based upon a modulation scheme that conforms to the modulation parameter prevailing at the time of retransmission, wherein said retransmitting means comprises:

comparison means for comparing the modulation parameter appended to the packet to be retransmitted and a modulation parameter conforming to the conditions of the propagation path prevailing at the time of retransmission (Paragraph 18 discloses a scenario where the path conditions have deteriorated leaving less resources. There must be a decision means to compare the conditions and determine the appropriate modulation parameter. Paragraph 19 discloses attaching identifying information including modulation of the original transmission and modulation of the current retransmission.); and

means for retransmitting a plurality of transmitted packets, which have been stored in said buffer means, as a single retransmission packet upon attaching respective identifying information of the plurality of transmitted packets if a result of the comparison is that the conditions of the propagation path at the time of retransmission are

superior to the conditions of the propagation path that prevailed at a time of a previous transmission (Paragraph 21 discloses retransmitting information from a plurality of packets as a single retransmission if the conditions have improved.).

Classon is silent retransmitting means for deleting a packet from said buffer means when a successful reception is sent back for the packet from a receiving side.

RLP2 discloses retransmitting means for deleting a packet from said buffer means when a successful reception is sent back for the packet from a receiving side (Section 3.1.2. discloses requesting retransmission of packets which have not been correctly received. This implies that correctly received packets do not need to take up further memory resources and are deleted from the buffer.).

It would have been obvious to one of ordinary skill in the art at the time of the invention to delete successful packets, as taught by RLP2, in the retransmission method of Classon because doing so helps to substantially reduce the error rate, as disclosed in section 1.1 of RLP2.

5. In regards to claim 58, Classon discloses the apparatus according to claim 57, wherein said retransmitting means further comprises: means for retransmitting part of a transmitted packet, which has been stored in said buffer means, as a single retransmission packet upon attaching identifying information if a result of the comparison is that the conditions of the propagation path at the time of retransmission are inferior to the conditions of the propagation path that prevailed at the time of the previous transmission (Paragraph 20 discloses retransmitting a portion of a packet if the conditions have deteriorated.).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KERRI M. ROSE whose telephone number is (571) 272-0542. The examiner can normally be reached on Monday through Thursday, 6 am - 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Aung MOE can be reached on (571) 272-7314. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aung S. Moe/
Supervisory Patent Examiner, Art Unit 2474

/Kerri M Rose/
Examiner, Art Unit 2474